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In the Supreme Court
OF THE
United States

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OCTOBER TERM, 1943

No. 305

STANLEY W. TAYLOR,

Petitioner,

VS.

PRENTISS M. BROWN, Price Administrator,

Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Emergency Court of Appeals
and
BRIEF IN SUPPORT THEREOF.

STANLEY W. TAYLOR,

1201 Fulton Street, San Francisco, California,

Petitioner.

C. M. WALTER,

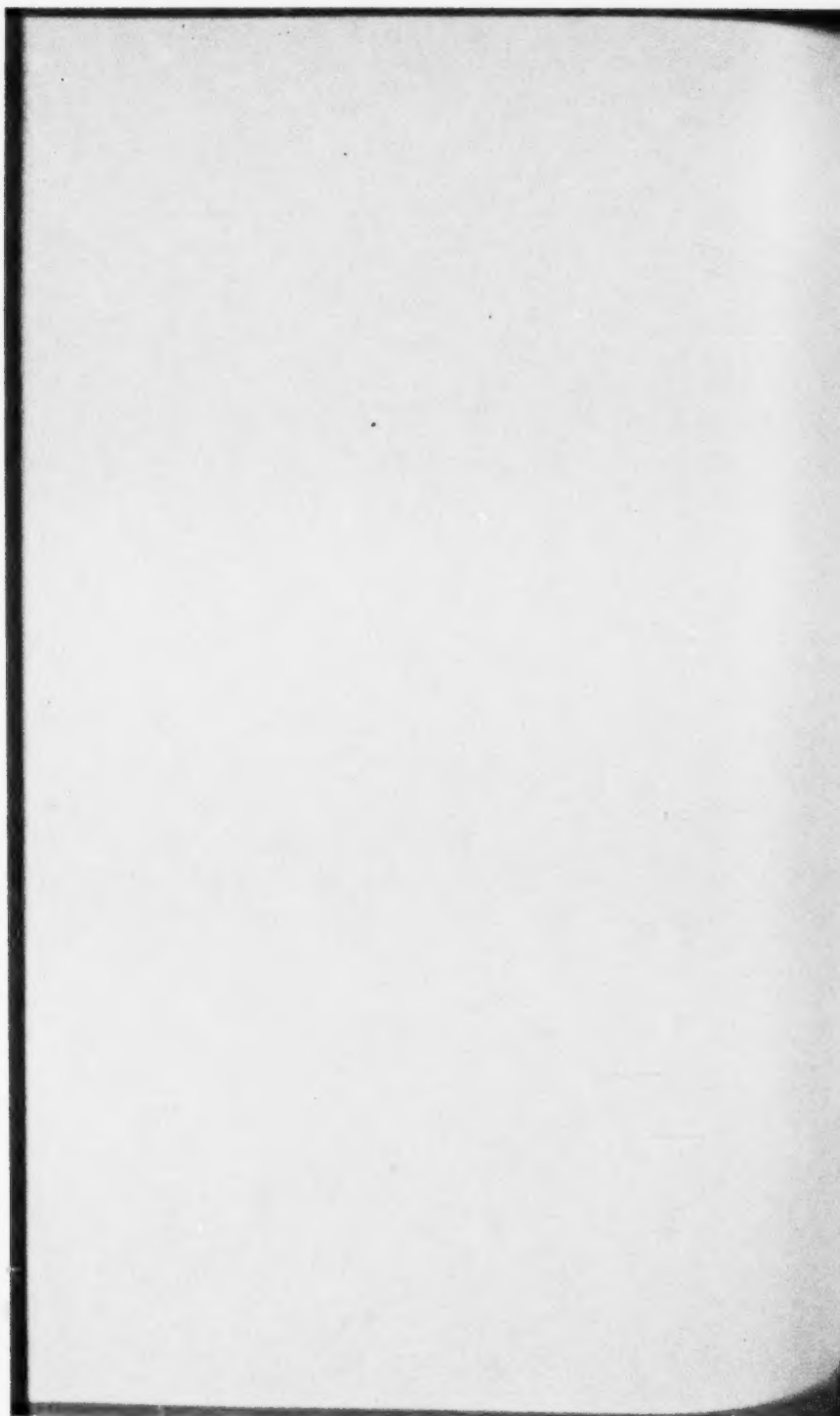
1419 Broadway, Oakland, California,

Attorney for Petitioner.

JOHN C. STIRRAT,

1419 Broadway, Oakland, California,

Of Counsel.



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No.

STANLEY W. TAYLOR,

Petitioner,

vs.

PRENTISS M. BROWN, Price Administrator,
Respondent.

PETITION FOR WRIT OF CERTIORARI to the United States Emergency Court of Appeals.

*To the Honorable Harlan Fiske Stone, Chief Justice
of the United States, and to the Associate Justices
of the Supreme Court of the United States:*

Your petitioner, Stanley W. Taylor, prays that a writ of certiorari issue to review the judgment of the United States Emergency Court of Appeals in the cause entitled Taylor v. Brown, No. 10, which became final on July 30, 1943, on the denial by said Court of petitioner's motion for rehearing therein.

In support thereof the petitioner respectfully represents to this Honorable Court as follows:

SUMMARY AND STATEMENT OF THE MATTER INVOLVED.

Heretofore, to-wit, on October 23, 1942, a complaint was duly filed by petitioner in the United States Emergency Court of Appeals, complaining against the Administrator of the Office of Price Administration because of the denial of his Protest MR 28-19-P duly filed with said Administrator on August 27, 1942, and denied by him on September 28, 1942. Said complaint was duly docketed as cause No. 10 in said Court and came on for hearing May 10, 1943. Judgment was entered by said Court on July 15, 1943 dismissing said complaint, and on motion duly made for a rehearing the Court denied said motion by its final order dated July 30, 1943.

There is included herewith and certified to be correct by the Clerk of the United States Emergency Court of Appeals, a transcript of record of said cause in said Court. The transcript includes copies of the following documents and papers:

- (1) Complaint,
 - (2) Answer of Respondent,
 - (3) Transcript of Proceedings before the Price Administrator,
 - (4) Proceedings in the United States Emergency Court of Appeals,
- in the case of

Stanley W. Taylor,

Complainant,

vs.

Prentiss M. Brown, Price Administrator,
Respondent.

Docket No. 10

Said cause raises the question of the validity of the rent control and procedural provisions of the Emergency Price Control Act of 1942 (Pub. Law 421, 77th Congress, 2nd Session, being Act of Jan. 30, 1942, C. 26, 56 Stat. 23), hereinafter called the Act. The said cause likewise protests the validity and propriety of Procedural Regulation No. 3 and Maximum Rent Regulation No. 28 issued by the Administrator under authority of the Act and the propriety of Registration Form DD 2-D issued thereunder.

The complaint charges in part that the Act and regulations discriminate unlawfully against landlords; that they authorize and result in the taking of private property for the private use of other persons without just compensation and without due process; that the Act, as far as such provisions are concerned, is an unconstitutional delegation of legislative authority; and that Regulation No. 28 is arbitrary and capricious and goes beyond the authority of the Act and is unconstitutional.

It is also charged in subsequent proceedings in said cause that the Administrator, after the filing of the complaint, instituted or caused to be instituted against

the petitioner various legal proceedings calculated to harass and annoy said petitioner. The petitioner sought to bring these actions before the Emergency Court of Appeals on the grounds that they each had an important bearing on the questions at issue and sustained the petitioner's contentions therein. The motion for admission of this evidence was denied by the Court.

STATEMENT OF JURISDICTION.

The jurisdiction of this cause is specifically vested in this Honorable Court by the provisions of the Act. Section 204(d) of said Act provides in part as follows:

“Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, * * * The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, * * *” (of the Act).

(Section 2 of the Act referred to in the above quotation is the section authorizing rent and price control and covers the regulations and orders herein at issue.)

The petitioner has duly followed the procedure set forth in Sections 203 and 204 of the Act and the sub-

ject matter of his protest and cause in the Emergency Court of Appeals is that specified in the appropriate provisions of the Act as herein set forth.

QUESTIONS PRESENTED.

The questions presented are as follows:

(1) Are the rent control provisions of the Emergency Price Control Act of 1942 a valid exercise of the war power of Congress?

(2) Does the circumstance that the United States of America is engaged in a war nullify the Constitution or suspend its operation, or must the war powers of Congress be exercised within constitutional limits and by constitutional methods?

(3) Does the Act in its delegation of authority to the Administrator of the Office of Price Administration violate the constitutional provisions which vest in Congress alone the power to legislate?

(a) Does the Act evince a clear, definite public policy?

(b) Are these policies insofar as they relate to rents of private property within the various states a proper field of congressional legislation under the Constitution?

(c) Does the Act provide a definite standard of conditions for activity in respect of which the execu-

tive or administrative authority must conform and shall function to satisfy or promote that policy?

(d) Does the Act require a factual determination by the Administrator of the existence of a status or congeries of circumstances respecting and related to the policy and standard as a prerequisite of the prescribed action?

(e) Does the Act exact activity from the Administrator when a specified state of facts or congeries of circumstances is found to exist, or does the Act leave it to the discretion of the Administrator to act or not to act when the statutory standard of conditions for action is extant?

(4) Do the rent control and procedural provisions of the Act violate or grant to the Administrator the power to violate the due process clause of the Fifth Amendment to the Constitution?

(5) Do the rent control provisions of the Act unlawfully or otherwise grant to the Administrator the power to take private property without any or just compensation for the benefit of private persons or for any other purpose?

(6)(a) Do the rent control provisions of the Act grant to the Administrator the power to issue regulations or orders prohibiting the private renting of a garage, or the providing of additional space, furnishings, services or facilities prior to consent first having been obtained from the Administrator?

(b) Do the rent control provisions of the Act grant to the Administrator the power to prohibit the

collection of any rent or charge for such garage, space, furnishings, services or facilities until a maximum rent or charge therefor has been fixed by the Administrator?

(b) Do the rent control provisions of the Act grant to the Administrator the power to make unlawful the retention of any rent or charge collected for such garage, additional space, furnishings, services or facilities for the period of time prior to the fixing of a maximum rent or charge for such facility?

(c) Is the common practice of the Administrator of requiring the refund to the tenant of all such charges (as enumerated in (b) above) as a prerequisite of an order fixing the maximum allowable charge for future use of such facilities a valid and lawful practice under the Act and under the Constitution?

(d) Where such facilities were provided after the maximum rent date but prior to the issuance of the maximum rent regulation is it unlawful after the effective date of such regulation to make a charge or continue charging for such facilities prior to the time that a maximum allowable charge is fixed or established by the Administrator?

(7) Is it lawful under the Act for the Administrator to prevent the recovery of possession of property where the owner seeks not to offer said property for rent?

(a) Is it lawful under the Act for the Administrator to require his consent to be first obtained before such property is withdrawn from rental?

(b) Is it lawful under the Act to prohibit recovery of possession of property for the purpose of sale thereof, or to place any restrictions upon such recovery or sale, such as the requirement of ninety days notice or one-third down payment from the purchaser or consent of the Administrator prior to such recovery of possession?

(c) Is it constitutionally lawful for the Price Administrator to promulgate and enforce regulations governing or prohibiting the eviction of tenants, which supersede and conflict with state laws which fully cover the grounds and procedure for such evictions?

(8) Is it lawful under the Act for the Administrator to require the reduction of rents which have not been the subject of unwarranted or abnormal increases?

(9) Is it lawful under the Act for the Administrator to prohibit warranted increases in rent where the housing accommodations are rented at rents below the prevailing rents of comparable housing accommodations in the neighborhood or defense-rental area where such accommodations are located?

(10) Is Maximum Rent Regulation No. 28 a lawful exercise of the powers conferred upon the Administrator?

(a) Is the regulation (28) generally fair and equitable in relation to the housing industry—or is it arbitrary and discriminatory?

(b) Do the eviction and adjustment provisions of said regulation provide adequate and proper protection to property owners?

(11) Does Procedural Regulation No. 3, issued under authority of the Act, constitute a valid and proper exercise of the powers conferred upon the Administrator by said Act?

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

Your petitioner respectfully shows to this Honorable Court that this is a case of great importance not only to your petitioner, but to all owners of property which is rented and to the multiple housing industry throughout the United States. The questions involved are of substantial and vital importance and widespread interest and have been the subject of various conflicting court decisions, and have never been passed upon by this Honorable Court which has been given final jurisdiction thereof.

The Emergency Price Control Act of 1942 is the most far-reaching law ever enacted by Congress. The Administrator created by the Act has issued regulations under which his agents and local administrators have undertaken to regulate and control the renting of housing accommodations and the occupancy thereof to a measure which seems altogether unreasonable and unlawful.

The scope and extent of such encroachment upon the rights of property owners may be best described

by offering excerpts from the official report of the Congressional Select Committee to Investigate Acts of Executive Agencies Beyond the Scope of Their Authority issued July 27, 1943. (Union Calendar No. 236, Report No. 699, House of Representatives, 78th Congress, 1st Session.)

In the introductory matter of said report the committee states, concerning the Act and its administration:

"The language of the act is admittedly general and contains many grants of discretionary authority to the Administrator. But, judging from testimony of O.P.A. officials themselves before this committee, the attempt has been made by these officials to stretch as far as possible the scope of this discretionary authority, rather than to determine with care the reasonable limits that should be and were intended by Congress to be drawn in the exercise of the authority granted. They further testified that they had failed to exercise certain discretionary powers granted under the Act to correct inequities and to do justice to individuals because of the administrative difficulties involved." (p. 3.)

In its findings of fact the committee reports:

"(1) Public Law 421, Seventy-seventh Congress, creating the Office of Price Administration, grants too broad a discretionary power to the Administrator, and fails to provide a sufficiently clear definition of this power, to guard against its abuse and to adequately safeguard the constitutional rights of citizens * * *." (p. 3.)

"(2) Certain regulations of O.P.A. have unnecessarily conflicted with national and local laws, and have compelled unwarranted changes in established business practices, in violation of section 2(h) and section 4(d) of the Act. Its requirement of a $33\frac{1}{3}$ per cent down payment on the purchase of homes and a 90-day delay in recovery of possession has drastically changed practices of the Home Owners' Loan Corporation * * *." (p. 3.)

"Your committee is of the opinion, from the evidence before it, that the Rent Department of O. P. A. has far exceeded the power given it, or intended to be given it, by the Congress with respect to the leasing of real estate and the terms and conditions of such leases." (p. 4.)

"By means of its regulations regarding evictions, the Rent Department of O.P.A. has set aside and over-ridden State and local laws with regard to evictions in all except three defense-rental areas, and has attempted to 'educate' the courts to do likewise, thereby acting beyond the scope of its authority and invading the constitutional rights of citizens. * * *" (p. 5.)

"(3) The committee is of the opinion that certain of the regulations of the Rent Department have deprived property owners of a portion of the equity in their property, when such action was unnecessary to bring about effective rent control * * *."

"O.P.A. grants permission to public housing to increase its rentals to the comparable market level but denies to private housing this right, even though the rentals in the private housing

were kept below the market level as a result of Federal Housing insurance regulations." (p. 5.)

Property owners alone of the whole economic system have been rigidly "frozen" at their worst relative economic position in history. They have been barred from the collection of any rent for the use of garages, extra rooms, extra furniture or equipment provided at the request of tenants and necessary to provide housing for war workers. Where such rent has been collected by owners they have been prosecuted and persecuted. Justifiable and proper adjustments commonly have been denied them until they would refund to the tenant any rents or charges collected prior to an order of the rent director permitting and fixing the proper charge therefor. Often these orders have been delayed for many months. If such owners have been unable to operate under these conditions and have attempted to go out of business or withdraw their property from rental the Administrator has threatened criminal action against them and in the case of petitioner, demanded heavy fines and the imprisonment of said petitioner.

Notwithstanding the facts as disclosed by the aforesaid congressional committee and as presented to the United States Emergency Court of Appeals in this and other causes no relief has been given to property owners by said Court.

This Honorable Court is the Court of last resort to which property owners must appeal for the protection of their rights. The Act itself specifically

places the powers of the Administrator outside the jurisdiction of State and Federal Courts and gives exclusive jurisdiction to the U. S. Emergency Court of Appeals and to this Honorable Court on review of judgments and orders of said Emergency Court of Appeals. (Section 204(d).)

It is obvious that each owner cannot come to this Honorable Court for aid regarding his own particular case. For this reason the original protest was filed by the petitioner in the manner provided by the Act itself while serving as chairman of the rent control advisory committee of an association of property owners representing many thousands of properties and dwelling units. Property owners throughout the nation anxiously await the review of this cause.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Emergency Court of Appeals to the end that the judgment of the United States Emergency Court of Appeals may be reviewed and remanded by this Honorable Court with such instructions as may be proper.

Dated, San Francisco, California,
August 26, 1943.

STANLEY W. TAYLOR,
Petitioner.

C. M. WALTER,
Attorney for Petitioner.

JOHN C. STIRRAT,
Of Counsel.

State of California,
City and County of San Francisco.—ss.

Stanley W. Taylor, being first duly sworn, deposes and says:

That he is the petitioner in the foregoing petition for writ of certiorari and that he has read the foregoing petition for writ of certiorari and knows the contents thereof and that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

Stanley W. Taylor.

Subscribed and sworn to before me this 26th day of August, 1943.

(Seal)

Ella Cook Kelly,

Notary Public in and for the City and County
of San Francisco, State of California.

My commission expires December 23, 1944.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1943

No.

STANLEY W. TAYLOR,

vs.

PRENTISS M. BROWN, Price Administrator,

Petitioner,

Respondent.

BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI.

The opinion of the United States Emergency Court of Appeals in this cause is reported in Pike and Fischer, OPA SERVICE, Volume 9, p. 612:9, and is included in the transcript of record in said Court (pp. 164-173).

I.

**STATEMENT OF GROUNDS ON WHICH THE JURISDICTION
OF THIS COURT IS INVOKED.**

The judgment of the United States Emergency Court of Appeals was dated July 15, 1943. (Tr. 174.) The final order in said Court denying rehearing in said cause was dated July 30, 1943. (Tr. 183.)

The petition for a writ of certiorari is filed in the Supreme Court of the United States in this cause pursuant to the procedure specifically provided in Sections 203, 204 and 204(d) of the Emergency Price Control Act of 1942 (Act Jan. 30, 1942, C. 26, 56 Stat. 23). It is therefore a justiciable cause properly before the Supreme Court of the United States for judicial review, the petitioner having raised his objections to the constitutionality of the said Act and of the Price Administrator's regulations thereunder at the earliest opportunity. *Carter v. Texas*, 177 U. S. 442, 20 Sup. Ct. 687.

Section 204(d) of the Emergency Price Control Act of 1942 specifically precludes all Federal, State and Territorial Courts, except the Emergency Court of Appeals and the Supreme Court of the United States from having or exercising any "jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision."

II.

STATEMENT OF THE CASE.

The statement of the case hereinbefore set forth in the petition for writ of certiorari (p. 2), including the statements of facts included under *Reasons Relied on for Allowance of Writ* (p. 9), is hereby referred to and adopted as the statement of the case herein as if the same were here fully set forth. Reference is also made to pages 5 to 27 of the transcript of record in the Emergency Court of Appeals.

Important constitutional questions are involved in this legislation, and should be passed upon by this Honorable Court.

III.**ERRORS OF COURT BELOW.**

The United States Emergency Court of Appeals erred in holding that the Act of January 30, 1942, Ch. 26, 56 Stat. 23, is within the proper exercise of the "war powers" conferred upon Congress in the Constitution (Tr. 166) and that it and the Administrator's regulations promulgated thereunder were not in violation of the Fifth Amendment to the Constitution and the other constitutional safeguards of the right of private property and contracts. (Tr. 169.)

IV.

**DUE PROCESS CLAUSE OF FIFTH AMENDMENT
VIOLATED.**

Exercise by the Congress of particular "war powers" does not permit it to disregard the Fifth Amendment. In exercising such "war powers", the Congress must respect the Fifth Amendment with the same scrupulous regard as in times of peace.

Home Building & Loan Ass'n v. Blaisdell, 290 U. S. 398;

Schechter v. U. S., 295 U. S. 495.

"The Constitution of the United States is a law for rulers and people equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."

Ex parte Milligan, 4 Wall. 2, 18 L. Ed. 281.

Under the regulations promulgated by the Price Administrator under the Act in question, an owner of rental property is given an opportunity for an administrative hearing *after* the taking of his property, but not *before*. Cases holding that "due process" under the Fifth Amendment require notice and hearing *before*, not *after*, contractual or property rights of the parties are affected to the detriment of either of the contracting parties are as follows:

Ochoa v. Morales, 230 U.S. 139;

Teigle v. Acme Homestead Ass'n, 297 U.S. 189;

Nord v. Griffin (7th Cir.), 86 Fed. (2d) 481
(certiorari denied, 300 U.S. 673);

Boeing Air Transport Inc. v. Farley, 75 Fed.
(2d) 765;

Norwood v. Baker, 172 U.S. 269;

*Road Improvement Dist. v. St. Louis etc. R.
Co.*, 28 Fed. (2d) 825.

True, most of the above causes involved a legislative taking of private property for a *public use*, and held it to be without due process of law. However, how much more violative of the Fifth Amendment is it to take such property without notice or hearing *before the taking for another's private use, as is the case here?* Here the tenant is by legislative fiat, without notice or hearing, given property of the landlord for the tenant's direct private benefit. If the public derives any interest from such taking, it is an incidental one.

*Farbwerke vormals Meister Lucius & Bruning
v. Chemical Foundation, Inc.*, 51 S. Ct. 25,
282 U.S. 819.

V.

THE EMERGENCY PRICE CONTROL ACT IN ITS RENT CONTROL PROVISIONS IS AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE AUTHORITY.

Merely a casual reading of the Act of January 30, 1942, C. 26, 56 Stat. 23, will disclose that the Act confers upon the Administrator therein created such broad and sweeping powers as to constitute such Administrator, if such Act is legally permissible, a one-man legislature. The constitutional prohibition

against the abdication by Congress of essential legislative functions, and what are essential elements to state in a legislative act where an administrative agency is given latitude in executing it, is so well set forth in two recent cases as to require no elaboration on this point excepting to apply the decisions of

Panama Refining Co. v. Ryan, 293 U. S. 388;
Schechter Poultry Corp. v. U. S., 295 U. S. 495.

If the Act of January 30, 1942, C. 26, 56 Stat. 23, is tested by the enunciated principles of those two decisions of the Supreme Court, it will be seen that the Act in question lacks at least three indispensable elements which must be present in order to uphold a statute under the Constitution which is not self-executing, but as condition to vitality in regard to designated persons or things, requires a determination or finding of an executive or administrative officer.

CONCLUSION.

The duty rests upon this Honorable Court to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation. (*Smyth v. Ames*, 169 U. S. 466.)

Dated, San Francisco, California,
 August 26, 1943.

Respectfully submitted,

C. M. WALTER,

Attorney for Petitioner.

JOHN C. STIRRAT,
Of Counsel.

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 305

STANLEY W. TAYLOR, PETITIONER

v.

PRENTISS M. BROWN, PRICE ADMINISTRATOR OF THE
OFFICE OF PRICE ADMINISTRATION

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES EMERGENCY COURT OF APPEALS*

MEMORANDUM FOR RESPONDENT

OPINION BELOW

The opinion of the United States Emergency Court of Appeals (R. 121-130) is not yet reported.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered July 15, 1943 (R. 131). The petition for a writ of certiorari was filed in this Court on August 30, 1943. Jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, as amended.

QUESTIONS PRESENTED

1. Whether the rent control provisions of the Emergency Price Control Act of 1942 are within the war power of Congress.

2. Whether the rent control provisions of the Act constitute an improper delegation of legislative authority.

3. Whether the rent control provisions of the Act and Maximum Rent Regulation No. 28, as applied to petitioner, violate the Fifth Amendment of the Constitution.

4. Whether the procedural provisions of the Act relating to protests and review in the Emergency Court of Appeals, and the provisions of Procedural Regulation No. 3, violate the due process clause of the Fifth Amendment.

5. Whether the general method of rent control established by Maximum Rent Regulation No. 28 and the eviction provisions contained therein constitute a valid exercise of the powers conferred upon the Administrator by the Act.

STATUTE AND REGULATIONS INVOLVED

The case involves the Emergency Price Control Act of 1942 (Act of January 30, 1942, 56 Stat. 23, 50 U. S. Code Appendix, Supp. II, Sec. 901, 901-924), Maximum Rent Regulation No. 28 (R. 64-85; 7 F. R. 4913), and Procedural Regulation No. 3 (R. 88-108; 7 F. R. 3936).¹

¹ Maximum Rent Regulation No. 28 has been supplanted by the Rent Regulation for Housing effective June 1, 1943, found in 8 F. R. 7322, which does not differ in material

The applicable provisions of the Emergency Price Control Act appear in the Appendix.

STATEMENT

The Emergency Price Control Act of 1942 was enacted on January 30, 1942. On June 30, 1942, the Administrator issued Maximum Rent Regulation No. 28, *supra*, effective July 1, 1942, establishing maximum rents for housing accommodations other than hotels and rooming houses in the San Francisco Bay Defense-Rental Area.

Petitioner, the owner of certain rental property in the said defense-rental area, pursuant to Section 203 of the Act, filed a protest (R. 22-60) against Maximum Rent Regulation No. 28, asserting that the rent control and procedural provisions of the Emergency Price Control Act of 1942 and the provisions of Maximum Rent Regulation No. 28 are unconstitutional. On September 28, 1942, the Price Administrator issued an order denying the protest (R. 61) together with an opinion stating the reasons for such denial (R. 62-63). Thereafter the petitioner filed a complaint with the United States Emergency Court of Appeals, seeking to set aside that order and to have the Act and the Regulation declared unconstitutional (R. 1-16). The Court dismissed the complaint,

respects from the Regulation set out in the Record. Procedural Regulation No. 3 has been supplanted by Revised Procedural No. 3, found in 8 F. R. 526, which does not differ in material respects from the Regulation set out in the Record.

holding that the Act and the Regulation are constitutional (R. 121-130).

DISCUSSION

The decision below presents certain fundamental questions with respect to the constitutionality of the Emergency Price Control Act of 1942 and the validity of the Maximum Rent Regulations issued thereunder. Some of the twenty-five principal and subordinate questions suggested by the petitioner are not properly presented on this record since they were not presented to the Administrator or to the court below; other questions suggested by the petitioner are not sufficiently substantial to warrant review by this Court. The substantial questions which we believe are properly presented on this record have been set forth above.

The decision of the Emergency Court of Appeals is in accord with all decisions of the United States circuit courts of appeals and district courts² except the decisions of the United States District Court for the Middle District of Georgia

² In *Roach v. Johnson*, 48 F. Supp. 833, the District Court of the United States for the Northern District of Indiana held the rent control provisions of the Act invalid on the ground of unconstitutional delegation of legislative power. The decision was set aside by this Court on the ground that the suit was collusive. *United States v. Johnson*, 319 U. S. 302.

in *Brown v. Willingham*,³ *Payne v. Griffin*, *Smith v. Griffin* and *Harden v. Milner Hotels, Inc.*, all decided August 30, 1943; that court held the rent control provisions of the Emergency Price Control Act invalid on the ground of unconstitutional delegation of legislative power. This question, and the other questions properly presented in this case, have not yet been resolved by this Court.

We believe that the decision of the court below is clearly correct, but that the questions we have outlined warrant review because of their importance in the administration and enforcement of the Emergency Price Control Act.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

GEORGE J. BURKE,
General Counsel,
Office of Price Administration.

OCTOBER 1943.

³ In *Brown v. Willingham*, appeal to this Court was allowed on September 30, 1943.

Other cases involving the constitutionality of the Emergency Price Control Act are collected in the Government's Memorandum in *Rottenberg v. United States*, No. 375, present Term, pp. 5-7.

APPENDIX

The applicable provisions of the Emergency Price Control Act (Act of January 30, 1942, 56 Stat. 23, 50 U. S. Code Appendix, Supp. II, Sec. 901) are as follows:

TITLE I—GENERAL PROVISIONS AND AUTHORITY

PURPOSE; TIME LIMIT; APPLICABILITY

SECTION 1. (a) It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living; to prevent hardships to persons engaged in business, to schools, universities, and other institutions, and to the Federal, State, and local governments, which would result from abnormal increases in prices;

to assist in securing adequate production of commodities and facilities; to prevent a post emergency collapse of values; to stabilize agricultural prices in the manner provided in section 3; and to permit voluntary cooperation between the Government and producers, processors, and others to accomplish the aforesaid purposes. It shall be the policy of those departments and agencies of the Government dealing with wages (including the Department of Labor and its various bureaus, the War Department, the Navy Department, the War Production Board, the National Labor Relations Board, the National Mediation Board, the National War Labor Board, and others heretofore or hereafter created), within the limits of their authority and jurisdiction, to work toward a stabilization of prices, fair and equitable wages, and cost of production.

* * * * *

PRICES, RENTS, AND MARKET AND RENTING PRACTICES

SEC. 2. * * *

(b) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local

regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accommodations, or comparable accommodations, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941, defense activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs. In designating defense-rental areas, in prescribing regulations and orders establishing maximum rents for such accommodations, and in selecting persons to administer such regulations and orders, the Administrator shall, to such extent as he determines to be practicable, consider any recommendations which may be made by State and local officials concerned with housing or rental conditions in any defense-rental area.

(c) Any regulation or order under this section may be established in such form and manner, may contain such classifications

and differentiations, and may provide for such adjustments and reasonable exceptions, as in the judgment of the Administrator are necessary or proper in order to effectuate the purposes of this Act. Any regulation or order under this section which establishes a maximum price or maximum rent may provide for a maximum price or maximum rent below the price or prices prevailing for the commodity or commodities, or below the rent or rents prevailing for the defense-area housing accommodations, at the time of the issuance of such regulation or order.

(d) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

* * * * *

(g) Regulations, orders, and requirements under this Act may contain such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof.

(h) The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids

to distribution, established in any industry, except to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act.

* * * * *

PROHIBITIONS

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) It shall be unlawful for any person to remove or attempt to remove from any defense-area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or agreement for the use of such accommodations, because such tenant or occupant has taken, or proposes to take, action authorized or required by this Act or any regulation, order, or requirement thereunder.

(c) It shall be unlawful for any officer or employee of the Government, or for any adviser or consultant to the Administrator in his official capacity, to disclose, otherwise than in the course of official duty, any information obtained under this Act, or to

use any such information, for personal benefit.

(d) Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent.

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TITLE II—ADMINISTRATION AND ENFORCEMENT

ADMINISTRATION

SEC. 201. * * *

(d) The Administrator may, from time to time, issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act.

* * * * *

INVESTIGATIONS; RECORDS; REPORTS

SEC. 202. (a) The Administrator is authorized to make such studies and investigations and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act, or in the administration and enforcement of this Act and regulations, orders, and price schedules thereunder.

(b) The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he

may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations. The Administrator may administer oaths and affirmations and may, whenever necessary, by subpoena require any such person to appear and testify or to appear and produce documents, or both, at any designated place.

* * * * *

PROCEDURE

SEC. 203. (a) Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days. Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event

more than thirty days after such filing or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date thereof specified in section 206) in respect of which the protest is filed, whichever occurs later, the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

(b) In the administration of this Act the Administrator may take official notice of economic data and other facts, including facts found by him as a result of action taken under section 202.

(c) Any proceedings under this section may be limited by the Administrator to the filing of affidavits, or other written evidence, and the filing of briefs.

REVIEW

SEC. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such por-

tions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided*, That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such

evidence shall be presented directly to the court.

(b) No such regulation, order, or price schedule shall be enjoined or set aside, in whole or in part, unless the complainant establishes to the satisfaction of the court that the regulation, order, or price schedule is not in accordance with law, or is arbitrary or capricious. The effectiveness of a judgment of the court enjoining or setting aside, in whole or in part, any such regulation, order, or price schedule shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (d) within such thirty days, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such petition becomes final, or until other final disposition of the case by the Supreme Court.

(c) There is hereby created a court of the United States to be known as the Emergency Court of Appeals, which shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The Chief Justice of the United States shall designate one of such judges as chief judge of the Emergency Court of Appeals, and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. The court shall have the powers of a district court

with respect to the jurisdiction conferred on it by this Act; except that the court shall not have power to issue any temporary restraining order or interlocutory decree staying or restraining, in whole or in part, the effectiveness of any regulation or order issued under section 2 or any price schedule effective in accordance with the provisions of section 206. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction under this Act. The court may fix and establish a table of costs and fees to be approved by the Supreme Court of the United States, but the costs and fees so fixed shall not exceed with respect to any item the costs and fees charged in the Supreme Court of the United States. The court shall have a seal, hold sessions at such places as it may specify, and appoint a clerk and such other employees as it deems necessary or proper.

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of

Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

* * * * *

TITLE III—MISCELLANEOUS

DEFINITIONS

SEC. 302. As used in this act—

* * * * *

(d) The term “defense-rental area” means the District of Columbia and any area designated by the Administrator as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of this Act.

(e) The term “defense-area housing accommodations” means housing accommodations within any defense-rental area.

(f) The term “housing accommodations” means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or

offered for rent for living or dwelling purposes (including houses, apartments, hotels, rooming or boarding house accommodations, and other properties used for living or dwelling purposes) together with all privileges, services, furnishings, furniture, and facilities connected with the use or occupancy of such property.

(g) The term "rent" means the consideration demanded or received in connection with the use or occupancy or the transfer of a lease of any housing accommodations.

(h) The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing: *Provided*, That no punishment provided by this Act shall apply to the United States, or to any such government, political subdivision, or agency.

(i) The term "maximum price", as applied to prices of commodities means the maximum lawful price for such commodities, and the term "maximum rent" means the maximum lawful rent for the use of defense-area housing accommodations. Maximum prices and maximum rents may be formulated, as the case may be, in terms of prices, rents, margins, commissions, fees, and other charges, and allowances.

* * * * *

(k) The term "district court" means any district court of the United States, and the United States Court for any Territory or other place subject to the jurisdiction of

the United States; and the term "circuit courts of appeals" includes the United States Court of Appeals for the District of Columbia.

SEPARABILITY

SEC. 303. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

In the United States Emergency Court of Appeals

No. 10

STANLEY W. TAYLOR, COMPLAINANT

v.

LEON HENDERSON, PRICE ADMINISTRATOR, RESPONDENT

RESPONDENT'S OBJECTIONS TO COMPLAINANT'S MOTION TO REQUIRE RESPONDENT TO SUPPLY A SUPPLEMENTAL TRANSCRIPT

Now comes Leon Henderson, Price Administrator, Respondent herein, by his duly authorized attorney and objects to the Motion of Complaint filed herein on December 12, 1942, insofar as said Motion requests this Court to direct the Administrator to supply a supplemental transcript. The grounds underlying such objections are as follows:

(1) To the extent that the Complainant's protest constituted an attack upon the constitutional validity of the Emergency Price Control Act of 1942, the Administrator was compelled to and did accept the constitutionality of that Act and, in denying the protest upon that ground, did not take official notice of any economic data or other facts within the meaning of Section 203 (b) of the Act. There exist certain facts, properly the subject of judicial notice, which support the constitutionality of the Act. To the extent appro-

priate, these will be presented to the Court in Respondent's Brief.

(2) In denying Complainant's protest insofar as it attacked the validity of Maximum Rent Regulation No. 28, Respondent did not take official notice of any economic data or other facts within the meaning of Section 203 (b) of the Act.

(3) The Second Report of the Office of Price Administration Covering the Operations of the Office Between May 1 and July 31, 1942, dated December 1, 1942 (House Doc. No. 891, 77th Cong., 2d Sess.), is a public document which was issued two months subsequent to the denial of Complainant's protest. Its contents were not officially noticed by the Administrator in denying the protest. In any event, the Report is a public document the contents of which are readily available to Complainant and subject to judicial notice by this Court.

Respondent does not object to Complainant's request for additional time within which to file his brief or to the request that his brief may exceed fifty pages in length.

The accompanying memorandum sets forth more fully the facts forming the basis for these objections and the arguments in support thereof.

Respectfully submitted.

DAVID GINSBURG,
General Counsel.

DECEMBER 1942.

In the United States Emergency Court of Appeals

No. 10

STANLEY W. TAYLOR, COMPLAINANT

v.

LEON HENDERSON, PRICE ADMINISTRATOR, RESPONDENT

MEMORANDUM IN SUPPORT OF RESPONDENT'S OBJECTIONS TO COMPLAINANT'S MOTION TO REQUIRE RESPONDENT TO SUP- PLY A SUPPLEMENTAL TRANSCRIPT

STATEMENT OF FACTS

On August 29, 1942, Complainant filed his protest, broadly attacking, among other things, the constitutional validity of the rent control sections of the Emergency Price Control Act of 1942 insofar as they attempt to regulate or control rents of private property outside of the District of Columbia and the validity of Maximum Rent Regulation No. 28 for Housing Accommodations Other Than Hotels and Rooming Houses, issued under authority of that Act on June 30, 1942, for the purpose of controlling rents in the San Francisco Defense-Rental Area, among others (Tr. 1-39).

On September 28, 1942, Respondent issued his order denying the protest and his opinion accompanying that order. Neither the order nor the opinion con-

tained any statement of economic data or other facts officially noticed by Respondent.

On October 23, 1942, Complainant instituted these proceedings. On November 13, 1942, Respondent filed his Answer to the Complaint and the Transcript of Proceedings before the Price Administrator. The Transcript contained no statement of economic data or other facts officially noticed by Respondent. It is this Transcript which Complainant seeks to have Respondent supplement by a statement of the economic data and other facts officially noticed by him.

ARGUMENT

I

In disposing of the protest Respondent did not take official notice of economic data or other facts within the meaning of Section 203 (b) of the Act

A. The constitutional validity of the Act

In Respondent's opinion accompanying the order denying Complainant's protest there appear the following paragraphs:

The Emergency Price Control Act was duly enacted by the Congress of the United States and became effective January 30, 1942. The Administrator is compelled to, and does accept the fact that the Emergency Price Control Act of 1942 is a valid congressional enactment in the interest of national defense and is constitutional * * *.

Though the Administrator is compelled to accept the constitutionality of the Emergency Price Control Act of 1942, this, of course, does not preclude full consideration of that issue by

the Emergency Court of Appeals, specially created by that Act (Tr. 41-42).

Hence, in reaching the decision that insofar as the protest attacked the validity of the Act it should be denied, Respondent regarded himself as bound to accept the constitutional validity of the Act which he was administering. In so doing, Respondent did not take official notice of any economic data or other facts within the meaning of Section 203 (b) of the Act.

This does not preclude the Administrator from presenting to this Court in support of the validity of the Congressional action, economic data or other facts properly the subject of judicial notice. To the extent appropriate, such facts will be set forth and considered fully in Respondent's Brief.

B. The validity of Maximum Rent Regulation No. 28

In determining that the control of rents in the San Francisco Defense-Rental Area would effectuate the purposes of the Act and in the issuance of Maximum Rent Regulation No. 28, the Administrator, of course, took into account certain economic data and other facts in his possession. Complainant did not challenge that Regulation, however, upon any grounds peculiar to the San Francisco Defense-Rental Area. The issues tendered by Complainant with respect to Maximum Rent Regulation No. 28 were general in character, applying to the method of rent control adopted by the Administrator generally throughout the United States.

Hence, in disposing of the protest insofar as it attacked the validity of Maximum Rent Regulation

No. 28, none of the economic data or other facts underlying the issuance of the Regulation were officially noticed or otherwise taken into account by Respondent, nor are they relevant to these proceedings.

II

The Second Report of the Office of Price Administration to Congress should not be incorporated in the Transcript

Complainant seeks to compel Respondent to supplement the Transcript of Proceedings heretofore filed, by the inclusion of the Second Report of the Office of Price Administration Covering the Operations of the Office Between May 1, and July 31, 1942, dated December 1, 1942 (House Doc. 891, 77th Cong., 2d Sess.). This Report was issued two months subsequent to the denial of the protest and its contents were not officially noticed by the Administrator.

Complainant's Motion states that the Second Report "contains matter vital to the establishment of complainant's allegations denied by the Respondent." To the extent that this may be true, the Report is a public document, readily available to Complainant, the contents of which are subject to judicial notice by this Court.

CONCLUSION

Complainant's Motion should be denied insofar as it seeks to require Respondent to supplement the Transcript heretofore filed in these proceedings.

Respectfully submitted.

DAVID GINSBURG,

General Counsel.

THOMAS I. EMERSON,

Associate General Counsel.

NATHANIEL L. NATHANSON,

Assistant General Counsel.

BEN W. HEINEMAN,

Chief, Court Review Branch.

SOL M. LINOWITZ,

Attorney.